

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANA M. CORDERO,

Plaintiff,

DECISION AND ORDER

06-CV-6650L

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

This is an action commenced pursuant to 42 U.S.C. § 405(g) to review the final decision of the Commissioner of Social Security (“Commissioner”) that plaintiff is not disabled, could perform her past relevant work and, therefore, is not entitled to disability insurance benefits. The Commissioner moved for judgment on the pleadings (Dkt. # 7) and plaintiff, represented by counsel, opposed that motion.

The case was referred to United States Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b) to review the record, the parties’ submissions, and to issue a Report and Recommendation as to how those motions and the case should be resolved. Magistrate Judge Scott issued a thorough 12-page Report and Recommendation on January 10, 2007 (Dkt. # 19). In that Report, Magistrate Judge Scott recommended that the Commissioner’s decision be reversed and the matter be remanded

to the Commissioner for further development of the record and further proceedings before the Commissioner.

The Commissioner did not file any objections to Magistrate Judge Scott's Report and Recommendation.

Magistrate Judge Scott, after reviewing all of the record, determined that there was insufficient evidence for the Administrative Law Judge's ("ALJ") finding that plaintiff was not disabled and could perform her past relevant work as a receptionist. Magistrate Judge Scott found that the ALJ erred in several respects. First of all, the ALJ failed to adequately explain the treating physician's conclusion that plaintiff was totally disabled. The ALJ did not reconcile that finding in his decision. Magistrate Judge Scott found that the ALJ failed to determine the severity of plaintiff's depression, failed to follow up on issues relating to plaintiff's pain and, importantly, failed to consider the cumulative impact of plaintiff's other conditions.

I believe Magistrate Judge Scott has carefully and accurately set forth the relevant law, the standards on appeal and has carefully discussed the relevant evidence of record. I agree with Magistrate Judge Scott's conclusion that the record needs to be developed further and the Commissioner needs to take better account of the opinions of plaintiff's treating physician.


I also agree that the record is not in such a state that this Court could order remand for payment of benefits. The record is not that clear. Upon a properly developed record, it may still be that the Commissioner determines that plaintiff does not qualify for benefits. Obviously, if there is substantial evidence to support that, using a proper analysis, then this Court must give deference to it. But, because of the errors committed at the hearing, as Magistrate Judge Scott suggests, the

matter should be remanded for a full and complete development of the record to consider all of plaintiff's ailments.

CONCLUSION

I adopt and accept the Report and Recommendation (Dkt. # 19) of United States Magistrate Judge Hugh B. Scott. The Commissioner's motion for judgment on the pleadings (Dkt. # 7) is denied. The Commissioner's decision denying benefits is reversed, and the case is remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further development of the record, consistent with the recommendation of United States Magistrate Judge Hugh B. Scott.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 5, 2007.